

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TENITTA D. FRANKLIN,
 Plaintiff,
 v.
 KLATKA PHILIP, et al.,
 Defendants.

Case No. 2:21-cv-02103-GMN-NJK

Order

[Docket No. 1]

Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.

I. In Forma Pauperis Application

Plaintiff filed the affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
4 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
5 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
6 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
7 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
9 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
10 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
11 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
12 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
13 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
14 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
15 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
17 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010).

18 Broadly construed, Plaintiff’s complaint consists of vague assertions that Defendants
19 engaged in discrimination against her when she was purchasing a car and made misrepresentations
20 to her about the quality of the car itself and the tax implications of the sale. Docket No. 1-1.
21 Plaintiff’s complaint fails to identify any cause of action she alleges or any legal theory to support
22 the cause of action. Moreover, Plaintiff provides some factual allegations but not enough to
23 sufficiently explain the claim being pursued or what relief Plaintiff seeks. Finally, Plaintiff has
24 failed to explain why this court has jurisdiction over any claim she alleges.

25 To comply with Rule 8, a complaint must set forth coherently who is being sued, for what
26 relief, and on what theory, with enough detail to guide discovery. *See McHenry v. Renne*, 84 F.3d
27 1172, 1178 (9th Cir. 1995). Although the Court construes complaints drafted by *pro se* litigants
28 liberally, they still must comply with the basic requirements of Rule 8. *See, e.g., Montgomery v.*

1 *Las Vegas Metropolitan Police Dept.*, 2014 WL 3724213, at *3 n.3 (D. Nev. July 28, 2014).
2 Moreover, the complaint must sufficiently allege a basis for the Court to assert subject matter
3 jurisdiction over the case. Plaintiff's complaint fails to sufficiently explain the claim being pursued
4 or allege subject matter jurisdiction, and therefore fails to satisfy Rule 8. The Court will, however,
5 allow Plaintiff an opportunity to amend the complaint to comply with Rule 8.

6 For the reasons explained above, Plaintiff's complaint is **DISMISSED** with leave to
7 amend. Plaintiff will have until **January 4, 2022**, to file an amended complaint, if the noted
8 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed
9 that the Court cannot refer to a prior pleading (i.e., the original complaint) in order to make the
10 amended complaint complete. This is because, as a general rule, an amended complaint supersedes
11 the original complaint. Local Rule 15-1(a) requires that an amended complaint be complete in
12 itself without reference to any prior pleading. Once a plaintiff files an amended complaint, the
13 original complaint no longer serves any function in the case. Therefore, in an amended complaint,
14 as in an original complaint, each claim and the involvement of each Defendant must be sufficiently
15 alleged. **Failure to file an amended complaint by the deadline set above will result in the**
16 **recommended dismissal of this case.**

17 IT IS SO ORDERED.

18 Dated: November 30, 2021

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22 Nancy J. Koppe
23 United States Magistrate Judge
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